HATE PROPAGANDA

Current Issue Review

85-6E

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Philip Rosen
Senior Analyst

Revised 8 October 1996

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Canada Communication Group -- Publishing
Ottawa, Canada K1A 0S9

Catalogue No. YM32-1/85-6-1996-09E
ISBN 0-660-16752-2

N.B. Any substantive changes in this publication which have been made since the preceding issue are indicated in **bold print.**

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HATE PROPAGANDA*

ISSUE DEFINITION

The controversy to which hate propaganda gives rise appears to be more virulent and far-reaching than the volume and availability alone of this material would seem to justify. Although material inciting hatred and advocating racial superiority, has probably always existed, the last 30 years have witnessed a widespread debate as to what, if anything, to do about it. This debate places in the most acute conflict possible generally accepted Canadian multicultural and egalitarian social values and the libertarian value of freedom of expression.

BACKGROUND AND ANALYSIS

A. Overview

The distribution of hate propaganda and the activities of racist groups have come in two waves since the 1960s. In the middle of that decade, anti-Jewish and anti-black hate propaganda was widespread in Canada, but especially in Ontario and Quebec. Simultaneously, neo-Nazi and white supremacist groups, based largely in the U.S., became active in Canada. The result was the 1965 Cohen Committee, upon whose recommendations to the Minister of Justice were based the 1970 amendments to the *Criminal Code* (s. 318-320) adopted by Parliament.

The second wave of racist group activity and hate propaganda has come since the mid-1970s. The Edmund Burke Society, Nationalist Party of Canada and Western Guard Party were active and the Ku Klux Klan was revived in Ontario and B.C., giving rise to the McAlpine

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* The original version of this Current Issue Review was published in January 1985; the paper has been regularly updated since that time.

inquiry into its activity in the latter province. Hate propaganda was not only anti-Jewish and anti-black, it was also anti-East Indian, anti-Catholic, anti-French and anti-Native people. It was not only in the form of leaflets or pamphlets, but was transmitted by telephone, video cassette and computer hook-up. It also attempted to pass for legitimate scholarship by appearing in the form of learned journals and books; this type of technique is best exemplified in the "Holocaust denial" literature and other forms of historical revisionism that are published for the purpose of inciting hatred. Most recently, so-called "Aryan Nations" groups based in the United States and the Heritage Front have given signs of increased activity in Canada.

This second wave of hate propaganda and racist group activity gave rise to a flurry of reaction and a wide-ranging debate. Proposals for legislative change came from a 1982 Vancouver Symposium on Race Relations and the Law, the 1984 Report of the Special House of Commons Committee on Visible Minorities (*Equality Now!*), the 1984 Report of the Canadian Bar Association's Special Committee on Racial and Religious Hatred, the 1985 Report of the Special Committee on Pornography and Prostitution in Canada (Fraser Committee) and the Law Reform Commission of Canada's 1988 *Report on the Recodification of the Criminal Law.*

The second wave has also been accompanied by prosecutions of perpetrators of racial hatred. Jim Keegstra, Donald Andrews and Robert Smith were all convicted of intentionally communicating hatred in violation of s. 319(2) of the Code. On 6 June 1988, the Alberta Court of Appeal reversed Jim Keegstra's conviction and quashed the charges. The Attorney General of Alberta appealed this decision to the Supreme Court of Canada, which, on 13 December 1990, allowed this appeal. The Alberta Court of Appeal on 13 March 1991, after dealing with the procedural issues returned to it by the Supreme Court of Canada, quashed Jim Keegstra's conviction and ordered a new trial. On 25 April 1991, the Attorney General of Alberta announced he would be proceeding with this retrial. On 10 July 1992 Mr. Keegstra was again convicted and sentenced; both he and the Crown once more appealed to the Alberta Court of Appeal. His conviction was again overturned by the Alberta Court of Appeal on 7 September 1994. **That decision itself was overruled by the Supreme Court of Canada on 28 February 1996.** On 29 July 1988, the Ontario Court of Appeal upheld the conviction of Messrs. Andrews and Smith,

whose appeal of this decision to the Supreme Court of Canada was dismissed on 13 December 1990.

Ernst Zundel was convicted of wilfully spreading false news by publishing "Holocaust denial" literature in violation of s. 181 of the *Criminal Code* but his conviction was reversed by the Ontario Court of Appeal and a new trial ordered. When the Supreme Court of Canada refused the Crown leave to appeal the Ontario Court of Appeal decision, the Ontario Attorney General ordered a new trial to take place. On 11 May 1988, Zundel was found guilty of spreading false news and was sentenced on 13 May 1988 to nine months in jail. He appealed the verdict to the Ontario Court of Appeal, which heard it on 18-22 September 1989 and rejected it on 5 February 1990. On 15 November 1990, the Supreme Court of Canada granted Ernst Zundel leave to appeal his conviction for spreading false news and on 27 August 1992 granted Zundel's appeal, it struck down s. 181 of the *Criminal Code* as an unconstitutional infringement of the right of free expression, and entered an acquittal.

John Ross Taylor and the Western Guard Party have twice been found in contempt of court for refusing to comply with a Human Rights Tribunal order under s. 13 of the *Canadian Human Rights Act* to cease communicating hate messages by telephone. These decisions were upheld by the Federal Court of Appeal. On 3 December 1987, the Supreme Court of Canada gave Taylor leave to appeal that Court's decision and on 13 December 1990 dismissed this appeal.

In early November 1988, a three-member Tribunal of the Canadian Human Rights Commission began hearings on a complaint that the Church of Jesus Christ Christian-Aryan Nations had communicated hate messages by telephone between February 1987 and February 1988. The Tribunal upheld the complaint on 25 July 1989.

In another case, a three-member Canadian Human Rights Tribunal on 5 September 1993 ordered the Vancouver-based Canadian Liberty Net to cease and desist from communicating hate messages by telephone. Members of the Toronto-based Heritage Front in early October 1993 indicated they would obey a Federal Court Order to cease communicating hate messages by telephone pending completion of proceedings before a Canadian Human Rights Tribunal. On

25 March 1996, the Federal Court rejected a contempt of court application against the Heritage Front for a lack of evidence that they had violated an earlier order.

In still another case, a Canadian Human Rights Tribunal ordered in Vancouver on 27 January 1994 that the Canadian Liberty Net cease communicating telephone hate messages directed against homosexuals. **This order was upheld by the Federal Court on 6 February 1996.**

On 2 August 1996, the Canadian Human Rights Commission advised Ernst Zundel that it was investigating a complaint against him under s. 13 of the *Canadian Human Rights Act*. The complaint involved his operation of a homepage on the Internet (World Wide Web). This is believed to be the first Commission investigation of its kind.

The law in place at the federal level will now be briefly described. The arguments for and against applying legal sanctions to hate propaganda will be canvassed.

B. Federal Legislation

1. Criminal Code

a. Present Law

Most of the discussion of hate propaganda has centred on s. 318-320 of the *Criminal Code*. These sections, adopted by Parliament in 1970, were based in large part on the 1965 Cohen Committee recommendations, although there were some significant differences.

Under s. 318 of the *Criminal Code*, everyone who advocates or promotes genocide is guilty of an offence punishable by five years' imprisonment. The term "genocide" is defined to mean killing members of an identifiable group or deliberately inflicting on an identifiable group conditions of life calculated to bring about the group's physical destruction. Section 318(4) of the *Criminal Code* defines an "identifiable group" as any section of the public distinguished by colour, race, religion or ethnic origin. The Cohen Committee Report would have added to these provisions of the *Criminal Code* in that it recommended a third element in the definition of genocide - the deliberate imposition of measures to prevent births within an identifiable group. In

addition, the Cohen Committee would have included "language" and "national origin" within the definition of "identifiable group."

Under s. 319(1) of the *Criminal Code*, anyone who communicates statements in a public place and thereby incites hatred against an identifiable group where such incitement leads to a breach of the peace is guilty of an indictable offence punishable by two years' imprisonment or a summary conviction offence. Section 319(2) makes it a crime to communicate, except in private conversation, statements that wilfully promote hatred against an identifiable group. Section 319(7) defines "communicating" to include communicating by telephone, broadcasting or other audible or visible means. "Public place" is defined to include any place to which the public has access as of right or by invitation, express or implied. "Statements" include words spoken or written or recorded electronically, electromagnetically or otherwise and also include gestures, signs or other representations.

No prosecution under s. 319(2) can be instituted without the consent of the provincial Attorney General. Any person charged under s. 319(2) of the *Criminal Code* has available four special defences set out in s. 319(3). These defences are: 1) that the communicated statements are true; 2) that an opinion or argument on a religious subject was expressed in good faith; 3) that the statements were relevant to a subject of public interest and were on reasonable grounds believed to be true; and 4) that in good faith the statements were meant to point out for removal matters tending to produce feelings of hatred of an identifiable group.

The Cohen Committee recommendations differed from these provisions of the *Criminal Code* in that they did not include that s. 319(2) should require the wilful promotion of hatred to be communicated in other than a private conversation. The Cohen Committee would not only have included in s. 319(2) the wilful promotion of hatred of an identifiable group, but also the promotion of "contempt" for such a group. Finally, the Cohen Committee recommended that only defences 1 and 3, and not defences 2 and 4 under s. 319(3) of the *Criminal Code* be open to a prosecution under s. 319(2).

Section 320 of the *Criminal Code* provides for the order by a judge of seizure and confiscation of hate propaganda, on reasonable grounds. Hate propaganda is defined in s. 320(8) as any writing, sign or visible representation advocating or promoting genocide, or the

communication of which would be an offence under s. 319(2). It merely needs to be shown that the material is hate propaganda for it to be seized - it does not have to be shown to be dangerous. The consent of the provincial Attorney General is required before these seizure and confiscation provisions can be used. The Cohen Committee did not recommend that this type of *in rem* proceeding be adopted but merely urged that it be studied.

b. Reform Proposals

Much of the discussion of the use of the *Criminal Code* against hate propaganda has centred on s. 319(2). Following the 1979 Ontario Court of Appeal decision in *R.* v. *Buzzanga* and *Durocher*, which found that in order to be convicted an accused must specifically have intended to incite hatred by distributing handbills, the debate has largely focused on the word "wilfully" in defining the offence of inciting hatred in s. 319(2). For a conviction, it would not be enough to show that the incitement of hatred was the result of the distribution of material; it would have to be shown that the accused's state of mind had indicated an intent to promote hatred. The individuals in *Buzzanga* were two Franco-Ontarians involved in a French language school dispute, who, to encourage their supporters, had distributed an anti-French handbill.

The 1982 Vancouver Symposium on Race Relations and the Law, the Special House of Commons Committee on Visible Minorities, the Government of Canada in its response to *Equality Now!*, the Canadian Bar Association Special Committee on Racial and Religious Hatred and the Special Committee on Pornography and Prostitution have all urged that the word "wilfully" be dropped completely from s. 319(2) of the *Criminal Code*. The Law Reform Commission recommended that this offence be replaced by one called "stirring up hatred," whereby anyone who publicly stirred up hatred against an identifiable group would be guilty of a crime.

Another issue that has garnered much attention centres on the four special defences available to an accused charged under s. 319(2) of the *Criminal Code*. Both the House of Commons Committee on Visible Minorities and the Government of Canada in its response to *Equality Now!* proposed that the *Criminal Code* be amended to ensure that the burden to adduce all elements of these special defences resides with the accused throughout a criminal prosecution. The Canadian Bar Association Special Committee on Racial and Religious Hatred urged that special

defences 2 and 3 be dropped thus leaving the two defences of "truth" and "efforts to remove feelings of hatred towards an identifiable group" available to an accused. The Law Reform Commission recommended that the defences be deleted as unnecessary in light of its formulation of the offence of "stirring up hatred."

The other issue that has aroused considerable controversy is the requirement for the provincial Attorney General's consent to a hate propaganda prosecution. This is a provision on which the Cohen Committee did not make a firm recommendation but which it merely urged be considered. The 1982 Vancouver Symposium on Race Relations and the Law, the Special House of Commons Committee on Visible Minorities, the Government of Canada in its response to *Equality Now!*, and the Special Committee on Pornography and Prostitution agreed that the requirement for the consent of the Attorney General for a prosecution under s. 319(2) of the *Criminal Code* should be removed. A majority of the Canadian Bar Association's Special Committee on Religious and Racial Hatred concluded that the requirement for the Attorney General's consent should be retained to prevent frivolous or vexatious hate propaganda prosecutions. The Law Reform Commission deferred any recommendations about the requirement for the Attorney General's consent until the release of its Working Paper on the powers of the Attorney General.

The Special Committee on Pornography and Prostitution recommended in its April 1985 Report that the definition "identifiable" groups in s. 318(4) of the *Criminal Code* should be broadened to include sex, age and mental or physical disability insofar as it applies to s. 319 of the *Criminal Code*. This same recommendation was also made by the Report of the Law Reform Commission in order that these provisions of the *Criminal Code* would be consistent with the prohibited grounds of discrimination set out in s. 15 of the *Canadian Charter of Rights and Freedoms*. The Commission expressed the view in its Working Paper on Hate Propaganda that this recommended amendment would not catch pornography. Bill C-54, dealing with pornography, received first reading on 4 May 1987. It contained an amendment to s. 318(4) of the *Criminal Code* to include "sex" within the definition of an identifiable group. This bill died on the Order Paper with the dissolution of Parliament on 1 October 1988.

2. Other Statutes

a. Present Law

In 1977, Parliament adopted the *Canadian Human Rights Act*, which, in addition to the now-familiar provisions for dealing with proscribed discriminatory acts, included s. 13, making it a prohibited discriminatory practice to use the telephone to communicate race hatred. To fall under s. 13, the communication by telephone or telecommunications facility must be repeated and it must be likely to expose a person or persons to hatred or contempt in that they belong to an identifiable racial, national, ethnic or religious group or a group defined by reason of age, sex, family or marital status, disability or pardoned conviction. Unlike the *Criminal Code's* hate propaganda provisions, it is not necessary to prove specific intent to succeed in showing the discriminatory practice and there are no special defences available to a respondent to such a complaint.

As in other cases before Human Rights Commissions, attempts are made to investigate and conciliate complaints under s. 13 of the Act before a Human Rights Tribunal is named. Once a Tribunal is named, it holds a hearing and comes to a finding which is binding on all parties. The Tribunal cannot enforce its own findings and orders; if these are not followed, they have to be filed with the Federal Court and enforced by contempt proceedings before that body. Section 13 of the Act has so far been successfully used only twice.

Section 13 was first used against John Ross Taylor and the Western Guard Party. A finding against them was made by a Human Rights Tribunal in 1979 and they were ordered to cease their propagation of racist telephone messages. This ruling was not obeyed; two findings of contempt by the Federal Court were accompanied by one-year jail sentences and $5,000 fines on 21 February 1980 and 20 December 1984. The December 1984 finding was upheld by the Federal Court of Appeal in April 1987 and in December 1987 was appealed to the Supreme Court of Canada, which dismissed the appeal on 13 December 1990.

Section 13 was used for a second time in April 1988, when the Canadian Human Rights Commission, having completed its investigation of a complaint that the Church of Jesus Christ Christian-Aryan Nations in Alberta had spread hatred by telephone messages, requested the

Canadian Human Rights Commission to name a Tribunal to deal with the issue. A three-member Canadian Human Rights Tribunal began its hearings in early November 1988. In a decision rendered on 25 July 1989, the Tribunal upheld the s. 13 complaint and ordered the Church of Jesus Christ Christian-Aryan Nations to cease and not to resume spreading hatred by telephone message. Section 13 has also been used against the Vancouver-based Canadian Liberty Net and the Toronto-based Heritage Front.

We have now dealt with the most important legislation at the federal level for dealing with hate propaganda. The other recourses against hate propaganda will now be briefly described.

Under s. 114 of the *Customs Tariff Act*, the Customs and Excise Branch of Revenue Canada is authorized to prohibit the importation into Canada of goods described in Schedule VII number 9956 of that legislation in the following terms; "Books, printed paper, drawings, paintings, prints, photographs or representations of any kind that constitute hate propaganda within the meaning of s. 320(8) of the *Criminal Code*." On 23 December 1987, Revenue Canada (Customs and Excise) issued guidelines for the interpretation of this provision.

Where the mails are being used to distribute hate propaganda, the Minister responsible for the Post Office may, under s. 43 of the *Canada Post Corporation Act*, where he believes a person is involved in criminal activity via the mails, make an interim prohibitory order disallowing delivery of mail addressed to or posted by that person. The person affected by such an interim prohibitory order may ask the Minister responsible for the Post Office to appoint a three-member Board of Review, which, after completing its investigation, submits its report and recommendations to the Minister. On receipt of the report, the Minister must reconsider the interim prohibitory order and either revoke it conditionally or unconditionally, or declare it to be a final prohibitory order. These provisions have been used on several occasions; John Ross Taylor has been subject to a prohibitory order since the mid-1960s and, more recently, Ernst Zundel succeeded in having an interim prohibitory order revoked.

b. Reform Proposals

The Special House of Commons Committee on Visible Minorities recommended that, since the Canadian Human Rights Commission has experience with problems of racism and racial discrimination, it should be given jurisdiction to deal with hate propaganda no matter how disseminated - by telephone, by mail, by radio or television and whether exported or imported. In its response to *Equality Now!*, the Government of Canada indicated it would give serious consideration to this recommendation and consult widely as to its practicality.

Bill C-114, An Act to amend the *Criminal Code* and the Customs Tariff, received first reading on 10 June 1986. It would have amended tariff item 99201-1 of Schedule C to the *Customs Tariff Act* to cover anything constituting hate propaganda within the meaning of s. 320(8) of the *Criminal Code*. The bill died on the Order Paper with the prorogation of Parliament. On 4 May 1987, Bill C-54, dealing with pornography but containing the above amendment to tariff item 99201-1 of Schedule C (now number 9956 of Schedule VII) to the *Customs Tariff Act*, received first reading. The bill died on the Order Paper with the dissolution of Parliament on 1 October 1988.

C. Arguments For and Against Hate Propaganda Legislation

The arguments in favour of hate propaganda legislation are as follows:

1. Rights are never absolute - in Canada they are exercised under law - legal intervention is justified in some circumstances.
2. Unlike the U.S. First Amendment libertarian position, the *Canadian Charter of Rights and Freedoms* is imbued with egalitarian rights, as set out in s. 15, which must be read in tandem with the libertarian rights of s. 2.
3. Canada is a multicultural society - this multiculturalism is accepted as a basic constitutional norm and as such is set out in s. 27 of the *Canadian Charter of Rights and Freedoms* - this constitutional norm must be read in tandem with the libertarian rights of s. 2 of the Charter.

4. Numerous reports and legislative enactments indicate a consensus as to the legitimacy of using the law against hate propaganda.
5. Many other Western liberal democracies have anti-hate propaganda legislation.
6. Canada must fulfil its international obligations by enacting hate propaganda legislation. The *Convention on the Prevention and Punishment of the Crime of Genocide, the International Covenant on Civil and Political Rights and the International Convention on the Elimination of all Forms of Racial Discrimination*, to all of which Canada is a signatory, oblige Canada to combat racism and the advocacy of genocide and racial superiority.

The arguments against hate propaganda legislation are as follows:

1. Libertarian rights, such as freedom of expression, are not divisible. Once they begin to be restricted, it is difficult to draw the line as to where such limitations on freedom stop.
2. The prosecution of hate propagandists enables them to use the courtroom as the medium to further disseminate their ideas. If they are convicted or found to have committed a prohibited discriminatory act, they may go on to make use of their martyrdom to further their cause.
3. Once enacted, hate propaganda legislation may be abused and used against those to whom it was not originally intended to apply.
4. At the present time, the purveyors of hate propaganda are of only marginal importance and have little impact on the body politic; hence no legislative measures or, at least, no strengthened laws are needed to deal with them.
5. Allowing purveyors of hate propaganda to distribute their material freely has a cathartic or safety valve effect.

PARLIAMENTARY ACTION

Following the tabling of the Cohen Committee Report on Hate Propaganda on 14 April 1966, Senator Connolly tabled Bill S-49, which received first reading on 6 November 1966 and proceeded no further. On 9 May 1967, Senator Deschatelets tabled Bill S-5, which received first reading on that day. On 21 November 1967 the bill received second reading and was

referred to the Special Senate Committee on the *Criminal Code* (Hate Propaganda). The Committee held hearings but did not report.

Senator Martin introduced Bill S-21 on 9 December 1968, when it received first reading; it subsequently died on the Order Paper. On 27 October 1969 the Minister of Justice (Mr. Turner) introduced Bill C-53, which, after Committee study in both Houses, received Royal Assent on 11 June 1970.

GENERAL CHRONOLOGY

9 December 1948 -	U.N. General Assembly adopted the *Convention on the Prevention and Punishment of the Crime of Genocide*.
3 March 1953 -	In an appearance before the Special House of Commons Committee studying the *Criminal Code* amendment bill, the Canadian Jewish Congress urged that a specific criminal offence relating to hate propaganda be adopted by Parliament.
January 1965 -	Minister of Justice Guy Favreau named a Special Committee under the Chairmanship of Dean Maxwell Cohen to report to him on hate propaganda.
24 March 1965 -	Beginning on 18 November 1964, the Standing House of Commons Committee on External Affairs conducted a study of Private Members' Bills dealing with hate propaganda and the advocacy of genocide, and asked in its Report that its mandate be extended into the new session of Parliament.
21 December 1965 -	U.N. General Assembly adopted the *International Convention on the Elimination of All Forms of Racial Discrimination*.
14 April 1966 -	The Minister of Justice tabled in the House of Commons the Cohen Committee Report, which he had received on 10 November 1965.
16 December 1966 -	U.N. General Assembly adopted the *International Covenant on Civil and Political Rights*.
11 June 1970 -	Parliament adopted and Royal Assent was given to amendments to the *Criminal Code*, based largely on Cohen Committee

recommendations, to deal with the advocacy of genocide and hate propaganda.

14 July 1977 - Parliament adopted and Royal Assent was given to the Canadian *Human Rights Act*, including a provision dealing with the communication of racial messages by telephone.

17 September 1979 - The Ontario Court of Appeal acquitted two Franco-Ontarians (Buzzanga and Durocher) of charges under s. 319(2) of the *Criminal Code* because they had not specifically intended to spread hatred.

30 April 1981 - The McAlpine Committee presented its Report on the activities of the Ku Klux Klan to the B.C. Minister of Labour. It recommended that the *Criminal Code* be strengthened and that the B.C. *Human Rights Code* be amended to deal with the advocacy of race hatred.

7 July 1981 - The B.C. Legislature adopted the *Civil Rights Protection Act*, based in part on McAlpine Report recommendations.

22-24 April 1982 - The Symposium on Race Relations and the Law held in Vancouver adopted recommendations on strengthening the hate propaganda provisions of the *Criminal Code*.

28 March 1984 - The Special House of Commons Committee on Visible Minorities included a number of hate propaganda recommendations in its Report *Equality Now!*

April 1984 - Patrick Lawlor Q.C. presented his Report on Group Defamation to the Ontario Attorney General.

25 May 1984 - The Manitoba Human Rights Commission published a revised draft Human Rights Code containing a hate propaganda provision.

20 June 1984 - The Government of Canada tabled in the House of Commons its response to *Equality Now!*, including provisions for dealing with hate propaganda.

27 August 1984 - The Canadian Bar Association Special Committee on Racial and Religious Hatred published its Report *Hatred and the Law*.

22 January 1985 - The Minister of Justice told the Standing House of Commons Committee on Justice and Legal Affairs that amendments to the

hate propaganda provisions of the *Criminal Code* would be forthcoming in February/March 1985.

14 March 1985 - The Federal Court of Appeal struck down the provision of the *Customs Tariff Act* prohibiting the importation of immoral or indecent material as being inconsistent with the freedom of expression guaranteed in the *Canadian Charter of Rights and Freedoms*.

22 March 1985 - Federal lawyers withdrew from an appeal under the *Customs Tariff Act* instituted by Jim Keegstra, who had been banned from importing the book *Hoax of the Twentieth Century*.

3 April 1985 - Royal Assent was given to Bill C-38, which amended the *Customs Tariff Act* to remedy the 14 March "void for vagueness" judgment of the Federal Court of Appeal.

15 April 1985 - The Canadian Human Rights Commission recommended in its 1984 Annual Report that its Act be amended so that Human Rights Tribunal orders would not only cover the content of telephone hate messages, but also the use of the telephone for this purpose.

April 1985 - The Special Committee on Pornography and Prostitution in Canada (the Fraser Committee) released its Report.

10 June 1986 - Bill C-114, An Act to amend the Criminal Code and the Customs Tariff, received first reading. It subsequently died on the Order Paper with the prorogation of Parliament.

15 August 1986 - The Law Reform Commission of Canada released its Working Paper (no. 50) on *Hate Propaganda*.

4 May 1987 - Bill C-54, an Act to amend the *Criminal Code* and Other Acts in Consequence Thereof, received first reading. This bill died on the Order Paper with the dissolution of Parliament on 1 October 1988.

23 December 1987 - The Minister of National Revenue announced the implementation of guidelines under the *Customs Tariff* to assist in prohibiting the entry into Canada of hate propaganda.

19 May 1988 - The Law Reform Commission of Canada released its Report on *Recodifying Criminal Law*.

28 June 1988 - Royal Assent was given to Bill C-135 extending the 3 April 1985 amendment to the *Customs Tariff Act* until 31 December 1989.

18 December 1988 - Private Member's Bill C-204, adding "age" to the definition of "identifiable group" in s. 318(4) of the *Criminal Code*, received first reading. This bill died on the Order Paper with the prorogation of Parliament.

19 February 1989 - The Minister of National Revenue announced that, pursuant to a request by Penguin Books for an advance ruling on the book *The Satanic Verses* by Salman Rushdie (of which it was the publisher) under the *Customs Tariff Act*, the book had been reviewed and found not to be hate propaganda as defined in the *Criminal Code*. Consequently, the book has continued to be allowed entry into Canada.

7 April 1989 - Private Member's Bill C-207 adding "age" to the s. 318(4) Cr.C. definition of "identifiable group" received first reading.

20 June 1989 - In response to a question put to him during consideration of estimates by the House of Commons Standing Committee on Justice and Solicitor General, the Minister of Justice indicated that a federal-provincial working group was considering the hate propaganda provisions of the *Criminal Code* but that proposals for change would await the decisions of the Supreme Court of Canada in the *Keegstra* and *Andrews/Smith cases*.

25 July 1989 - A Canadian Human Rights Tribunal upheld a complaint that the Alberta-based Church of Jesus Christ Christian-Aryan Nations had communicated hate messages by telephone and ordered that these messages cease and not be resumed.

27 June 1990 - Private Member's Bill C-326, adding "sex" and "sexual orientation" to the definition of "identifiable group," in s. 318(4) of the *Criminal Code*, received first reading.

28 September 1990 - Private Member's Bill C-207 was withdrawn and the subject-matter referred to the House of Commons Standing Committee on Justice and Solicitor General.

7 August 1991 - Revenue Canada officials indicated that the Ku Klux Klan's newspaper *The Klansman*, which had recently been distributed in Quebec, had been declared hate propaganda and should not have entered Canada from the United States. Border officials had been warned to be more vigilant about such material.

9 August 1991 - Quebec's Attorney General stated that issues of the Ku Klux Klan's newspaper *The Klansman* distributed in the Montreal and Sherbrooke areas were hate propaganda. He said he would be starting *Criminal Code* prosecutions once police investigations were complete.

12 August 1991 - An Alberta Human Rights Commission Board of Inquiry began hearings in Edmonton about certain activities of the Church of Jesus Christ Christian-Aryan Nations at Provost, Alberta, in September 1990.

7 November 1991 - A Quebec police investigation concluded there was insufficient evidence to prosecute those responsible for distribution of the Ku Klux Klan's newspaper *The Klansman*.

17 January 1992 - The Canadian Human Rights Commission announced a tribunal would be established to hear a complaint about hate telephone messages in Vancouver.

3 March 1992 - The Federal Court granted an injunction to the Canadian Human Rights Commission ordering the Canadian Liberty Net to cease its telephone hate messages in Vancouver.

22 June 1992 - The trial in Winnipeg of three members of the Ku Klux Klan charged, under s. 318 of the *Criminal Code*, with advocating genocide began in Manitoba Provincial Court.

9 July 1992 - The Federal Court found the Canadian Liberty Net in contempt of court for failing to obey an injunction that it cease its telephone hate messages in Vancouver.

26 August 1992 - The Federal Court imposed a prison sentence and fines for contempt of court upon Canadian Liberty Net and one of its operators.

8 September 1992 - The charges in Winnipeg against three members of the Ku Klux Klan were stayed by the prosecutor after tainted evidence was introduced at trial.

18 December 1992 - A Canadian Human Rights Tribunal in Winnipeg ordered the Ku Klux Klan to cease using the telephone lines anywhere in Canada to deliver hate messages.

4 February 1993 - The Canadian Human Rights Commission lodged an application with the Federal Court in Toronto to have the Heritage Front held in contempt of court. The Commission alleged that the Front had recommenced using telephone lines to deliver hate messages, thus violating the Court's interim injunction of 5 August 1992.

5 September 1993 - A three-member Canadian Human Rights Tribunal ordered the Vancouver-based Canadian Liberty Net to cease from communicating hate messages by telephone.

Early October 1993 - Members of the Toronto-based Heritage Front agreed to respect a Federal Court Order that they cease from communicating hate messages by telephone.

27 January 1994 - A Canadian Human Rights Tribunal ordered that the Vancouver-based Canadian Liberty Net cease communicating telephone hate messages directed against homosexuals.

Early April 1994 - Members of the Toronto-based Heritage Front entered into a consent agreement with the Canadian Human Rights Tribunal (which ended its hearings) to cease communicating hate messages by telephone.

2 June 1994 - The Federal Court found three leading members of the Heritage Front in contempt of court for failing to obey an order that they cease telephone hate messages in Toronto.

22 June 1994 - The Federal Court sentenced the three leading Heritage Front members found in contempt of court on 2 June to jail terms. They were released pending appeal.

14-29 August 1994 - Public allegations were made that CSIS was involved through a human source in the establishment and activities of the Heritage Front. Both SIRC and the House of Commons Sub-Committee on National Security undertook investigations.

15 December 1994 - SIRC's report on a CSIS source inside the Heritage Front was made public. SIRC concluded that many of the allegations were untrue and the source had rendered useful service to CSIS. It recommended that a fuller policy for the handling of CSIS sources be developed.

3 April 1995 - In response to a question in the House of Commons, the Solicitor General indicated that the government was considering possible ways to prevent the spread of hate propaganda on the Internet.

20 June 1995 - It was announced that a Canadian Human Rights Tribunal would consider a telephone hate message complaint against B.C. resident Charles Scott.

30 April 1996 - A Canadian Human Rights Tribunal upheld a telephone hate message complaint against B.C. resident Charles Scott.

19 June 1996 - The House of Commons Sub-Committee on National Security tabled its report on the involvement of a CSIS human source in the Heritage Front.

2 August 1996 - The Canadian Human Rights Commission advised Ernst Zundel of its investigation of a telephone hate message complaint about his Internet Website.

CHRONOLOGY OF KEEGSTRA CASE

11 January 1984 - With the consent of the Alberta Attorney General, Jim Keegstra was charged under s. 319(2) Cr.C.

5 November 1984 - Mr. Justice Quigley of the Alberta Court of Queen's Bench rendered a judgment in the Keegstra case in which he found that the hate propaganda provisions of the *Criminal Code* were not in violation of freedom of expression as guaranteed in the *Canadian Charter of Rights and Freedoms*. Mr. Keegstra's trial was set to begin on 9 April 1985.

20 July 1985 - A jury found Jim Keegstra guilty as charged under s. 319(2). McKenzie J. of the Alberta Court of Queen's Bench imposed sentence of a $5,000 fine and allowed Mr. Keegstra 30 days to pay it.

14 August 1985 - Both Crown and defence lawyers appealed the verdict and the sentence in the Keegstra case.

6 June 1988 - The Alberta Court of Appeal rendered a decision quashing the charges against Jim Keegstra and declaring s. 319(2) in violation of the Charter-of-Rights guaranteed freedom of expression. The Attorney General of Alberta indicated he would be appealing this decision to the Supreme Court of Canada.

13 December 1990 - The Supreme Court of Canada upheld s. 319(2) of the *Criminal Code* as a reasonable limit on Charter-guaranteed freedom of expression.

13 March 1991 - The Alberta Court of Appeal, after dealing with the procedural issues returned to it by the Supreme Court of Canada, quashed the conviction of Jim Keegstra and ordered a new trial.

25 April 1991 - The Attorney General of Alberta announced he would be proceeding with the retrial of Jim Keegstra.

15 August 1991 - The Supreme Court of Canada refused Jim Keegstra leave to appeal the March 1991 decision of the Alberta Court of Appeal.

2 March 1992 - Jim Keegstra's new trial began in Red Deer, Alberta.

10 July 1992 - A jury found Jim Keegstra guilty as charged under s. 319(2) of the *Criminal Code*. Lutz J. of the Alberta Court of Queen's Bench imposed a $3,000 fine and allowed Mr. Keegstra 30 days to pay it, in default of which he would serve 90 days' imprisonment.

2 February 1994 - The Alberta Court of Appeal heard the appeals in the Keegstra case.

7 September 1994 - The Alberta Court of Appeal again quashed the conviction of Jim Keegstra, this time because of procedural irregularities in relation to the jury.

22 September 1994 - The Attorney General of Alberta announced he would be appealing the Court of Appeal decision to the Supreme Court of Canada.

18 May 1995 - The Supreme Court of Canada ruled that Jim Keegstra could not raise constitutional issues in the appeal before it.

28 February 1996 - The Supreme Court of Canada overruled the Alberta Court of Appeal and restored the conviction of Jim Keegstra.

CHRONOLOGY OF *ZUNDEL CASE*

9 January 1985 - Mr. Justice Locke of the Ontario District Court ruled that s. 181 of the *Criminal Code* (wilfully spreading false news) is not in violation of freedom of expression guaranteed by the *Canadian*

Charter of Rights and Freedoms. The jury trial of Ernst Zundel, alleged publisher of Holocaust denial literature, then proceeded.

28 February 1985 - An Ontario District Court jury found Ernst Zundel guilty on one of two counts of spreading false news under s. 181 of the *Criminal Code*.

25 March 1985 - Mr. Justice Locke of the Ontario District Court sentenced Ernst Zundel to 15 months in jail to be followed by three years' probation during which he was not to publish material on the Holocaust. Mr. Zundel indicated he would appeal both the guilty verdict and the sentence.

23 January 1987 - The Ontario Court of Appeal reversed the conviction of Ernst Zundel and, because of legal errors by the judge at his trial, ordered a new trial.

4 June 1987 - The Supreme Court of Canada denied the Crown's application for leave to appeal the Ontario Court of Appeal decision in the Zundel case. Attorney General Ian Scott announced in the Ontario Legislature that Ernst Zundel would have a new trial as ordered on 23 January 1987 by the Ontario Court of Appeal.

18 January 1988 - The second jury trial of Ernst Zundel on charges of wilfully spreading false news (s. 181 of the *Criminal Code*) began in Ontario District Court.

11 May 1988 - An Ontario District Court jury found Ernst Zundel guilty under s. 181 of the *Criminal Code* of spreading false news (this was his second trial). Mr. Zundel indicated he would appeal the verdict.

13 May 1988 - Mr. Justice Thomas of the Ontario District Court sentenced Ernst Zundel to 9 months in jail.

5 February 1990 - The Ontario Court of Appeal rejected the appeal by Ernst Zundel, and upheld both his conviction and the sentence imposed on him.

15 November 1990 - The Supreme Court of Canada granted Ernst Zundel leave to appeal his conviction on constitutional issues alone.

20 June 1991 - Mr. Justice Cory of the Supreme Court of Canada refused on jurisdictional grounds to delete a clause of Ernst Zundel's bail conditions that restricts his activities as a publisher or distributor.

His right to take such a Charter-based challenge to this bail condition to the full Court was preserved by Cory J.

27 August 1991 - The Supreme Court of Canada upheld Ernst Zundel's appeal and struck down s. 181 of the *Criminal Code* as unconstitutional.

CHRONOLOGY OF *ANDREWS/SMITH* CASE

9 December 1985 - Donald Andrews and Robert Smith, of the Nationalist Party of Canada, publisher and editor respectively of the *Nationalist Report*, were found guilty under s. 319(2) of the *Criminal Code* by Mr. Justice Wren of the Ontario District Court.

13 December 1985 - Mr. Justice Wren of the Ontario District Court sentenced Donald Andrews and Robert Smith to one-year and seven-month jail terms respectively.

29 July 1988 - The Ontario Court of Appeal rendered a decision upholding the conviction of Donald Andrews and Robert Smith and declaring that s. 319(2) of the *Criminal Code* was not in violation of the Charter-of-Rights-guaranteed freedom of expression. The lawyer for Messrs. Andrews and Smith indicated that this decision would be appealed to the Supreme Court of Canada.

13 December 1990 - The Supreme Court of Canada upheld s. 319(2) Cr. C. as a reasonable limit on Charter-guaranteed freedom of expression.

CHRONOLOGY OF *TAYLOR* CASE

6 April 1983 - The U.N. Human Rights Committee held inadmissible a complaint by John Ross Taylor and the Western Guard Party that a finding against their telephone hate messages and an order of discontinuance under s. 13 of the *Canadian Human Rights Act* was an infringement of their right to maintain and hold opinions protected under the *International Covenant on Civil and Political Rights*.

20 December 1984 - Associate Chief Justice Jerome of the Federal Court rendered a judgment in which he found that the provision of the *Canadian*

Human Rights Act dealing with the propagation of hatred by telephone was not in violation of freedom of expression as guaranteed in the *Canadian Charter of Rights and Freedoms*. John Ross Taylor and the Western Guard Party were found in contempt of court and sentenced to a $5,000 fine and a year in jail.

22 April 1987 - The Federal Court of Appeal rendered a judgment upholding a December 1984 Trial Division decision that the provisions of the *Canadian Human Rights Act* dealing with the propagation of hatred by telephone were not in violation of the Charter-of-Rights-guaranteed freedom of expression. The contempt finding and sentence against John Ross Taylor and the Western Guard Party were also upheld.

3 December 1987 - The Supreme Court of Canada granted John Ross Taylor and the Western Guard Party leave to appeal the 22 April 1987 Federal Court of Appeal decision upholding a contempt of court finding under the *Canadian Human Rights Act*.

13 December 1990 - The Supreme Court of Canada upheld s. 13 of the *Canadian Human Rights Act* as a reasonable limit on Charter of Rights-guaranteed freedom of expression.

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